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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 MERCED ZAMORA,

16 Defendant.

2:20-CR-00160-RMP-1

United States' Response to
Defendant's Motion to Suppress

17 Plaintiff, United States of America, by and through, Joseph H. Harrington,
18 Acting United States Attorney for the Eastern District of Washington, and Patrick
19 J. Cashman, Assistant United States Attorney for the Eastern District of
20 Washington, submits the following response to the Defendant's motion to
21 suppress because the circumstances provided a well-founded basis to impound
22 the vehicle and conduct an inventory search. Accordingly, any evidence derived
23 from the inventory search was properly seized pursuant to a valid search warrant
24 and the Defendant's motion should be denied.

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28 United States' Response to Defendant's Motion to Suppress - 1

I. Introduction

The Defendant was charged by way of indictment on November 17, 2020 with one count of Possession with Intent to Distribute 50 Grams or More of Methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), and one count of Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1). ECF No. 1.

On August 18, 2021, the Defendant filed a motion to suppress evidence. ECF No. 27. The Defendant argues Deputy Othmer of the Spokane County Sheriff's Office (SCSO), failed to follow State of Washington law and SCSO policy when he decided to impound the vehicle the Defendant was driving at the time of his arrest.

Based upon a totality of the evidence and circumstances more fully briefed below, Deputy Othmer's decision to impound the vehicle was appropriate and reasonable, and the subsequent search warrants obtained by Detective Richmond were supported by probable cause. Accordingly, the Defendant's motion should be denied.

II. Facts¹

While conducting routine patrol at approximately 12:08a.m. on January 11, 2019, Deputy Othmer of the Spokane County Sheriff's Office (SCSO) observed a

¹ The United States offers this as a summary only prepared by the assigned AUSA not the potential witnesses involved. Although the summary was prepared from the discovery materials, the United States defers to the proposed exhibits, which include the incident reports, recordings and upcoming testimony as the best source as to the factual background. All exhibits have previously been provided in discovery.

1 silver Honda engage in a traffic violation resulting in Deputy Othmer initiating a
2 traffic stop. ECF No. 27-1, A-3. The traffic violation occurred at the intersection
3 of Ash Street and Central Avenue in Spokane, within the Eastern District of
4 Washington. Id. Specifically, Deputy Othmer observed the silver Honda make a
5 left hand turn from the far-right lane, crossing over the center lane and entering
6 onto Central Avenue in the eastbound direction. Id. Deputy Othmer initiated a
7 traffic stop of the vehicle by activating his vehicle's overhead lights. Id. Deputy
8 Othmer noted the vehicle continued driving east on Central Avenue at
9 approximately five miles per hour for approximately three blocks. Id. Deputy
10 Othmer noted the absence of traffic or vehicles on the shoulder that would have
11 prevented the silver Honda from pulling over sooner. Id. Noting the need for
12 officer safety based upon this observation, Deputy Othmer requested another unit
13 to assist him. Exhibit A; *see also* Exhibit C, pg. 1.

14 Deputy Othmer made contact with the driver, who was identified by his
15 Washington State identification card as the Defendant, Merced Zamora. ECF No.
16 27-1, A-3. Also in the vehicle was a female passenger, later identified as Melissa
17 Clark. Id., A-4. During this initial contact Deputy Othmer informed the
18 Defendant as to the basis for the traffic stop. Id., A-3. Deputy Othmer
19 subsequently returned to his vehicle and conducted a records check and learned
20 the Defendant's license was suspended in the third degree. Id. Deputy Othmer
21 waited in his patrol vehicle until a second deputy, Deputy Cinkovich, arrived
22 before exiting his patrol vehicle. Id. Deputy Othmer, at approximately
23 12:17a.m., approached the vehicle and placed the Defendant under arrest for
24 driving with a suspended license and informed dispatch that he had one in
25 custody. Exhibit A, CAD Log. Deputy Othmer conducted a search incident to
26 arrest of the Defendant's person, which resulted in no contraband being located.

1 ECF No. 27-1, A-3. Deputy Othmer inquired as to the owner of the vehicle,
2 which the Defendant indicated he was the owner after having purchased the car
3 approximately three days prior from the individual listed on the registration. Id.
4 A separate registration check conducted by Deputy Othmer indicated the vehicle
5 was not registered to the Defendant but rather to a different individual. Id.; *see*
6 *also* Exhibit A. A bill of sale was not provided or subsequently located that
7 indicated the Defendant's previous purchase of the vehicle. Exhibit B, pg. 2.

8 While Deputy Othmer addressed the above, Deputy Cinkovich returned to
9 the Defendant's vehicle because the female passenger was requesting to call for a
10 ride.² ECF No. 27-2. During this interaction, Deputy Cinkovich observed a
11 plastic bag between the driver's seat and the center console. Id. Deputy
12 Cinkovich further observed the bag appeared to contain a crystal-like substance.
13 Id. In order to inform Deputy Othmer of this information, Deputy Cinkovich
14 asked Deputy Hoff to maintain oversight of the object. Id. Deputy Hoff was a
15 trainee deputy and is not employed by the SCSO. Exhibit C, pg. 2. Deputy
16 Cinkovich during this process informed Deputy Othmer from outside the vehicle
17 he observed what appeared to be a clear plastic bag containing a crystal like
18 substance. ECF No. 27-2. Deputy Cinkovich further indicated the bag was
19 located between the center console and the driver's seat near the seatbelt buckle
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21 ² The Defendant proffers through counsel that he observed a deputy open the
22 door and place his upper body inside the vehicle to tell Ms. Clark she was free to
23 leave. The Defendant throughout his motion makes numerous speculative self-
24 serving statements that are not the product of a signed and sworn declaration,
25 therefore, the Court cannot rely on these statements unless the Defendant
26 testifies. *See* LCrR47 and LCivR7(h).
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1 receiver. Exhibit C, pg. 2. Deputy Othmer returned to the vehicle and observed
2 what appeared to be a clear plastic bag but was unable to see the contents. ECF
3 No. 27-1, A-3; Exhibit C, pg. 2. Deputy Othmer inquired into Ms. Clark's
4 driving status and learned from Ms. Clark and a records check that her license
5 was also suspended. Exhibit B, pg. 3. Ms. Clark indicated that she needed to
6 leave to address a family medical issue. Ecf No. 27-1, A-4. Accordingly, Deputy
7 Othmer determined because the vehicle was not registered to the Defendant and
8 there was a different owner listed on the registration, pursuant to RCW
9 46.55.113(1), he would impound the vehicle. ECF No. 27-1. At approximately
10 12:30a.m., Deputy Othmer requested dispatch initiate a tow. Exhibit A. Prior to
11 Deputy Othmer conducting an inventory of the contents of the Honda, the
12 Defendant stated "anything in the vehicle is not his and that it is the previous
13 owners." ECF No. 27-1, A-3.

14 Deputy Othmer, following SCSO impound policy began an inventory of
15 the vehicle. ECF No. 27-5. During this inventory, Deputy Othmer observed the
16 plastic bag previously described by Deputy Cinkovich. ECF No. 27-1. Deputy
17 Othmer proceeded to inventory the contents of the center console when he
18 observed a pistol. Id. Deputy Othmer exited the vehicle and returned to his patrol
19 vehicle to conduct a records check where he learned the Defendant was a
20 convicted felon. Id. Subsequently, Deputy Othmer requested dispatch cancel the
21 impound tow and schedule a contract tow in order to secure the vehicle and
22 deliver it to the SCSO in order for a search warrant to be secured. Exhibit A.

23 On January 15, 2019, Detective Brad Richmond and Deputy Othmer
24 executed a state search warrant on the vehicle. Exhibit B. During the search
25 warrant execution, the officers located a loaded black Ruger LCP .380 caliber
26 pistol, bearing serial number 370-61483 in the center console as well as a jar
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1 containing several buds of marijuana. In the lower portion of the center console,
2 Deputy Othmer located a greenish colored coin bag containing a small plastic bag
3 containing approximately 2.5 grams of a white powdery substance, a second
4 plastic bag containing approximately 1.8 grams of a white crystal-like substance,
5 and a third plastic bag containing an unidentified white crystal-like substance.
6 Also located in the lower console was a firearm magazine containing .22 caliber
7 ammunition, a black Samsung cell phone, a box containing eighty-eight
8 Winchester .380 caliber bullets, and a plastic bag containing six .380 caliber
9 bullets. Located in a black colored backpack on the rear passenger seat behind
10 the driver's seat, officers located an electronic scale and a plastic bag containing
11 approximately 34.4 grams of a white crystal like substance from the front small
12 compartment. A subsequent field test of the crystal like substance indicated a
13 presumptive positive for methamphetamine. In the main compartment of the
14 backpack, officers located a large ball wrapped in a black and gray plastic sack.
15 This ball weighed approximately 206.8 grams and appeared to contain a white
16 crystal like substance that subsequently field tested presumptive positive for
17 methamphetamine.

18 Located behind the front passenger seat was a backpack with a flower
19 print. Inside the backpack officers located several sandwich sized clear Ziploc
20 bags and a silver colored digital scale. Officers also located an employee ID card
21 from Cannabis and Glass with the name of a different individual. The
22 photograph of the individual did not resemble the Defendant or Ms. Clark.
23 Additionally, the officers located a torn-up small phonebook with the
24 Defendant's name and several other pieces of paperwork in the flower backpack.
25 In the trunk of the vehicle, the officers located a Marlin 989 .22 caliber rifle as
26 well as approximately fifty .22 caliber bullets.

1 On August 25, 2021, Detective Kevin Langford from the Spokane
2 Regional Safe Streets Task Force, contacted Divine's Auto to determine who
3 retrieved the vehicle from their impound lot after the search warrant execution.
4 Detective Langford learned from an employee at Divine's the vehicle was
5 returned to the registered owner. Exhibit C.

6 The United States intends to supplement the exhibits previously provided
7 to the Court with testimony from Deputy Othmer at the suppression hearing.

8 **III. Law and Argument**

9 **A. The deputy conducted a lawful impoundment and inventory of the vehicle.**

10 The United States Supreme Court has held inventory searches as a valid
11 exception to the Fourth Amendment. *See South Dakota v. Opperman*, 428 U.S.
12 364 (1976), *Colorado v. Bertine*, 479 U.S. 367 (1987), and *Florida v. Wells*, 495
13 U.S. 1 (1990). The purpose of inventory searches due to impound is to ensure the
14 car and its contents are secure and protected. *Opperman*, 428 U.S. at 373; *see*
15 *also Florida v. Wells*, 495 U.S. at 4. In the Ninth Circuit "police may, without a
16 warrant, impound and search a motor vehicle so long as they do so in
17 conformance with the standardized procedures of the local police department and
18 in furtherance of a community caretaking purpose, such as promoting public
19 safety or the efficient flow of traffic." *United States v. Torres*, 828 F.3d 1113,
20 1118 (9th Cir. 2016); *see also United States v. Caseres*, 533 F.3d 1064, 1074 (9th
21 Cir. 2008) ("Warrantless inventory searches of vehicles are lawful only if
22 conducted pursuant to standard police procedures that are aimed at protecting the
23 owner's property and at protecting the police from the owner charging them with
24 having stolen, lost, or damaged his property") (emphasis added).

25 Pursuant to Washington State law it is a misdemeanor to operate a motor
26 vehicle with a suspended license. *See* RCW 46.20.342(1)(C). If a driver of a
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1 vehicle is arrested for violation of RCW 46.20.342 or 46.20.345, the vehicle “is
2 subject to summary impoundment, pursuant to the terms and conditions of an
3 applicable local ordinance or state agency rule at the direction of a law
4 enforcement officer.” *See* RCW 46.55.113(1). RCW 46.55.113(2) further
5 outlines other circumstances where the officers may take custody of the vehicle at
6 their discretion. In Spokane County, the SCSO has developed a policy that
7 complies with State law. ECF No. 27-5. The policy states “[w]henever a person
8 in charge or in control of a vehicle is arrested, it is the policy of this department
9 to provide reasonable safekeeping for the arrestee’s vehicle.” ECF No. 27-5.

10 However, in considering whether to impound a vehicle, the policy
11 indicates a deputy “should *consider* reasonable alternatives prior to impounding
12 any vehicle.” ECF No. 27-5 (emphasis added). Among the factors a deputy may
13 consider, but not limited to, are: whether the offense of arrest mandates vehicle
14 impoundment; the availability of someone at the scene of the arrest to whom the
15 vehicle could be released; whether the vehicle is impeding the flow of traffic or a
16 danger to public safety; whether the vehicle can be secured; whether the
17 owner/operator requests the vehicle be stored; and whether the vehicle would be
18 in jeopardy of theft or damage if left at the scene in a high-crime area. The
19 policy further requires deputies to conduct an inventory of any impounded
20 vehicle “for the purpose of protecting an owner’s property while in sheriff’s
21 custody, to provide for the safety of deputies, and to protect the [SCSO] against
22 fraudulent claims of lost, stolen, or damaged property.”

23 Deputy Othmer was not required to exhaust all potential avenues as
24 suggested by the Defendant. *See State v. Tyler*, 177 Wash.2d at 699 (1997); *see*
25 *also Colorado v. Bertine*, 479 U.S. 367, 373-74 (1987), citing *Illinois v.*
26 *Lafayette*, 462 U.S. 640, 647 (1983) (in relation to reasonable police regulations
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1 consideration of alternative to towing and impoundment are not required because
2 the reasonableness of any governmental activity does not necessarily turn on the
3 existence of less intrusive means). Rather, Deputy Othmer need only consider
4 other alternatives and determine, including consideration of his training and
5 experience, what the appropriate course of action was. In determining whether
6 an impoundment is reasonable under the circumstances requires an act of
7 judgment by the officer on the scene. *See State v. Villela*, 194 Wash.2d 451, 460
8 (2019). Moreover, “when an officer impounds a vehicle for a reason other than
9 the community caretaker function, the State is not required to establish that the
10 driver’s spouse or friends are not able to move the vehicle.” *See State v.*
11 *Froehlich*, 197 Wn.App. 831 (2017). Washington courts have previously held
12 “when an officer was acting under a statutory authority to impound because the
13 driver had a suspended license, the owner of the vehicle was not at the scene, and
14 there was no inquiry into whether someone could come move the vehicle, the
15 impoundment and resulting inventory search were lawful. *See State v. Peterson*,
16 92 Wn.App. 899, 902-03 (1998).

17 The Defendant asserts his case is distinguishable from *Peterson* but
18 provides no analysis to support this conclusion. On the contrary, the facts in
19 *Peterson* support a finding that Deputy Othmer acted appropriately under the
20 circumstances of this case. In *Peterson*, the defendant was the driver and sole
21 occupant of a vehicle stopped for a traffic violation. *Peterson*, 92 Wn.App. at
22 901. Upon conducting a records check of the defendant, the officer learned the
23 defendant had a suspended license. *Id.* Additionally, the officer learned the
24 vehicle was registered to a separate individual. *Id.* Based upon this information
25 and without attempting to contact the registered owner, the officer decided to
26 impound the car. *Id.* During the course of an inventory of the car, the officer
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1 located controlled substances. *Id.* The Washington Court of Appeals, Division 3
2 held the impoundment and subsequent inventory were reasonable under the
3 circumstances of this case. *Id.* at 903. Of particular note in the court’s holding,
4 the court stated “the owner was not present to authorize a license and insured
5 driver to remove the vehicle or to authorize leaving the vehicle by the side of the
6 road...The impoundment was the best approach to protect the police and the
7 property owner and was reasonable under these circumstances.” *Id.*

8 Deputy Othmer’s decision to impound the vehicle was appropriate and
9 reasonable under the circumstances. Deputy Othmer gave consideration to
10 alternatives, including determining if the passenger could drive the vehicle, but
11 deemed those alternatives insufficient to protect the registered owner’s, who was
12 not the Defendant, property. While it is accurate Deputy Othmer, following the
13 policy, had a number of options to consider, including: (1) determine if an
14 individual on scene could lawfully take the vehicle, which Ms. Clark was not
15 able to do as she left the scene and her license was revoked; (2) contact the
16 registered owner, which Deputy Othmer did but was unsuccessful; or (3)
17 impound the vehicle.

18 Given the surrounding circumstances, Deputy Othmer, having considered
19 the alternatives of leaving the vehicle or allowing a licensed operator to take the
20 vehicle, determined the appropriate course of action was to impound the vehicle.
21 This decision was driven by the late hour of the stop, Deputy Othmer’s
22 observations of the Defendant, the Defendant’s suspended driving status, the
23 passenger’s suspended driving status, and Deputy Othmer’s concern that the
24 vehicle was not registered to the Defendant and therefore releasing the vehicle,
25 without further proof of ownership, could result in harm to the vehicle or liability
26 for the county.

1 The Defendant further alleges the Deputy made a hasty decision to
2 impound the vehicle. This is belied by the CAD report which shows the Deputy
3 placed the Defendant under arrest at 12:17a.m. and requested a tow
4 approximately 13 minutes later at 12:30a.m.. Exhibit A. This was not a hasty
5 decision. The deputy considered the particular circumstances of the stop and
6 determined the reasonable course of action was to impound the vehicle.
7 Accordingly, when considering the totality of circumstances, Deputy Othmer's
8 decision to impound the vehicle, was lawful and reasonable.

9 In *United States v. Magdirilia*, the Ninth Circuit held the denial of a
10 motion to suppress was correct because the evidence was discovered during a
11 valid inventory search. 962 F.3d 1152, 1155. While *Magdirilia* is most
12 applicable in pre-text analysis, the facts of the case give support to the matter
13 before the Court. In *Magdirilia*, officers contacted the defendant because his
14 vehicle was parked in violation of a municipal code and lacked permanent
15 license plates. Upon making contact with the defendant, the officers learned the
16 defendant did not have a driver's license and the vehicle belonged to a "friend."
17 Based upon the defendant's lack of a driver's license, the officers decided to
18 impound the vehicle. *Id.* at 1154. This decision "triggered a duty under the
19 policy to take an "accurate inventory" of the vehicles contents.' *Id.* at 1155.
20 Similarly in the matter before the Court, Deputy Othmer's decision to impound
21 the vehicle triggered the duty to conduct an inventory of the contents of the
22 vehicle.

23 B. The deputy conducted the impound and inventory in good faith.

24 The deputy did not conduct the impound and inventory in bad faith and as
25 a pre-text to conduct a general rummaging. *Florida v. Wells*, 495 U.S. at 4. The
26 burden is on the defendant to establish evidence that an inventory search was a
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1 pretextual in nature. *United States v. Orozco*, 858 F.3d 1204, 1213 (9th Cir.
2 2017); *see also United States v. Maestas*, 2 F.3d 1485, 1489 (10th Cir. 1993).
3 Here, the Defendant has not, and cannot, meet his burden of establishing the
4 single motive of the inventory search was investigative and nature and that but
5 for the investigative motivation the search would not have occurred.

6 “A search conducted pursuant to a regulatory scheme is invalid if the
7 officer’s sole purpose in performing it is investigatory. *Orozco*, 858 F.3d at
8 1210. However, when conducting an inventory search, a law enforcement officer
9 may maintain a “dual motive” and the search will not be invalid. *United States v.*
10 *Johnson*, 889 F.3d 1120, 1126 (9th Cir. 2018) (“the mere ‘presence of a criminal
11 investigatory motive’ or a ‘dual motive – one valid, and one impermissible” does
12 not render the search invalid). Rather, the courts have routinely looked to
13 determine whether the challenged search or seizure “would...have occurred in
14 the absence of an impermissible reason.” *Id.*; *see also United States v. Johnson*,
15 889 F.3d 1120, 1126 (9th Cir. 2018) (“We thus must determine whether Johnson
16 has produced evidence that demonstrates the officers would not have searched
17 and seized items from the car he was driving but for an impermissible motive”).

18 In *Johnson*, the Ninth Circuit noted the defendant’s argument the officers
19 inventory search was pretextual overlooked the need to impound the car.
20 *Johnson*, 889 F.3d at 1126. In *Johnson*, the defendant was not the owner of the
21 vehicle nor could he provide contact information for the car’s owner. *Id.* The
22 Ninth Circuit found

23 “Johnson’s inability to contact the owner could not have been
24 orchestrated by the police...In other words, the officers’ chosen
25 method of stopping Johnson would seem to be a poor way to
26 orchestrate a scenario in which they would get to tow his car unless
27 they could have somehow known ahead of time that the car’s true
28 owner would be unavailable to retrieve it. There is no evidence

1 that the officers were aware of such fact when they chose to pull
2 him over.”

3 *Id.*

4 In this case, Deputy Othmer impounded and inventoried the vehicle in
5 good faith. The circumstances at the time of the inventory in fact supported a
6 suspicion the vehicle may have been stolen or taken without permission.
7 However, that suspicion was not the motivation for conducting the inventory.
8 Rather, following SCSO policy which mandates an inventory of any vehicle that
9 is impounded was the motivating factor. Beyond the aforementioned reasoning
10 supporting the impoundment, Deputy Othmer’s intent at the time of the inventory
11 is supported by the CAD log which shows Deputy Othmer requesting an
12 impound tow and subsequently, only after observing a firearm, did Deputy
13 Othmer request a contract tow.

14 Moreover, while Deputy Othmer’s suspicion of the vehicle potentially
15 being stolen was not the motivating factor for searching the vehicle, the
16 information related to that suspicion warrants the deputies consideration on the
17 appropriateness of the impound. Had the vehicle actually been stolen and
18 released back to a “friend” of the Defendant, Deputy Othmer would have been
19 unwittingly allowing the continued deprivation of property from its rightful
20 owner. At the time of the stop, the only information Deputy Othmer could
21 reasonably rely on for ownership were the State records that indicated the
22 Defendant was not the registered owner of the vehicle. Deputy Othmer had the
23 legal authority, pursuant to statute, to impound the vehicle. Deputy Othmer
24 considered the alternatives to impound and determined, based on his training and
25 experience, those alternatives were not reasonable. Therefore, that decision
26 triggered a duty to conduct an inventory.

1 Furthermore, the Defendant, again without support or in declaration,
2 proffers Deputy Othmer placement of a phone call and subsequent release is
3 indicative of the pre-textual nature of the search. The Defendant's position is
4 misplaced and belied by Deputy Othmer's statement to Detective Langford. The
5 decision to release the Defendant was driven by Deputy Othmer's superior
6 officer as a determination was made that all charges would be forward to the
7 Spokane County Prosecutor's Office to make a determination whether to file
8 charges. Exhibit C.

9 Accordingly, the Court should deny the Defendant's motion on this basis
10 as the search was not pretextual and the Defendant has failed to establish his
11 burden.

12 C. The deputies obtained search warrants to ensure they did not exceed the
13 scope of the inventory search.

14 The United States agrees a search warrant void of the inventory search
15 information would not support a finding of probable cause. However, based
16 upon the aforementioned, the inventory search was properly conducted.
17 Therefore, the search warrant contained sufficient probable cause to justify the
18 authorization and subsequent search of the vehicle.

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20 D. The Defendant abandoned his privacy interest in the items located in the
21 vehicle.

22 Because Deputy Othmer properly impounded the vehicle and followed
23 SCSO policy and procedure and was lawfully present in the vehicle, the items
24 located pursuant to the inventory search and subsequent search warrant are not
25 the product of an illegal search. Rather, the Defendant abandoned his reasonable
26 expectation of privacy to the contents of the vehicle prior to the inventory search
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1 occurring. Where a defendant voluntarily abandons property, he has no standing
2 to complain of the subsequent seizure and search. *Abel v. United States*, 362 U.S.
3 217, 240-41 (1960). “Abandonment is primarily a question of intent, and intent
4 may be inferred from words, acts, and other objective facts.” *United States v.*
5 *Jackson*, 544 F.2d 407, 409 (9th Cir. 1976). In *United States v. Veatch*, the Ninth
6 Circuit held the defendant had no standing to challenge the search of a wallet
7 located in a vehicle he obtained through fraud and was a passenger in. 674 F.2d
8 1217, 1221 (9th Cir. 1981). At the time of the defendant’s arrest, law
9 enforcement officers observed a wallet and firearm where the defendant was
10 previously seated. *Id.* at 1219. Upon asking the defendant if he wanted those
11 items taken with him, the defendant explicitly disclaimed ownership of those
12 items. *Id.* When a party disclaims ownership, they lose “a legitimate expectation of
13 privacy in the property and thereby disclaims any concern about whether the
14 property or its contents remain private.” *Id.* at 1220. Where an individual denies
15 ownership, even when previously observed in possession of the item, they have
16 abandoned their interest in the item. *United States v. Cella*, 568 F.2d 1266, 1283
17 (9th Cir. 1977).

18 Here, the Defendant prior to the inventory search, stated “anything in the
19 vehicle is not his and that it is the previous owners.”³ ECF No. 27-1, A-3. The
20 Defendant, by his statements, therefore limited his reasonable expectation of
21 privacy to only those items inside the car that were his. However, due to the
22 Defendant’s disclaimer of ownership over “anything inside the car,” the
23 Defendant effectively abandoned his reasonable expectation of privacy of those
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25 ³ This statement is further information warranting consideration in determining
26 whether impoundment and inventory is reasonable.
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1 items within the vehicle. These items include the baggie of methamphetamine,
2 the firearm in the center console, the backpacks located on the backseat of the
3 car, and the items located in the trunk. The Defendant cannot maintain the
4 benefit of the protection of the Fourth Amendment while simultaneously
5 abandoning any ownership or possessory responsibility for those items.

6 E. The Defendant's remaining basis for suppression are not relevant to the
7 analysis.

8 The Defendant proffers three additional basis warranting suppression: (1)
9 the search was not the result of a lawful *Terry* frisk; (2) the search was not the
10 result of plain view; and (3) the search was not the result of a lawful search
11 incident to arrest. The United States does not believe these basis are relevant to
12 the analysis.

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IV. Conclusion

The issue before the Court is whether the impoundment of the vehicle was reasonable under the circumstances. Here, based on the totality of the circumstances at the time of the impoundment, the Deputies decision was reasonable, appropriate, and lawful. Accordingly, the Court should deny the Defendant's motion because the evidence located during an inventory search and subsequent execution of search warrants was lawfully seized.

DATED August 27, 2021.

Joseph H. Harrington
Acting United States Attorney

s/Patrick J. Cashman
Patrick J. Cashman
Assistant United States Attorney

CERTIFICATION

I hereby certify that on August 27, 2021, I electronically filed the foregoing with the Clerk of the Court and that this document will be sent to counsel of record via e-mail.

Lorinda Youngcourt: Lorinda_youngcourt@fd.org

s/Patrick J. Cashman

Patrick J. Cashman

Assistant United States Attorney